IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 877 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANJULABEN W/O. KALIDASBHAI UKABHAI MALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 877 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, LD.AGP for Respondent No.1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/07/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenue, who is a lady detenue, has challenged the detention order passed against her by the detaining authority, by its order dated 26.12.2003 under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order of

detention, the petitioner was also served with the grounds of detention.

2. In the grounds of detention, there is a reference about five criminal cases registered against the petitioner for allegedly dealing in country liquor illegally. All the aforesaid cases are under the Bombay Prohibition Act. The authority, after considering the aforesaid cases and after considering the statements of witnesses, passed the aforesaid order detaining the petitioner under PASA.

3. Learned Advocate for the petitioner submitted that the petitioner made a representation against such detention on 2.1.2004, which was received by the detaining authority on 3.1.2004. He submitted that the petitioner has also made another representation on 9.1.2004 through jail. It is submitted by the learned advocate for the petitioner that, even though the representation was initially made on 2.1.2004 to the detaining authority, the detaining authority has not forwarded the same immediately to the State Government, and ultimately the State Government had rejected the said representation on 21.1.2004. It is submitted that there is a delay in forwarding the said representation, as the representation dated 2.1.2004 was forwarded to the Government on 9.1.2004 and the same was disposed of by the State Government on 21.1.2004. Though the point of delay was already taken in the petition, there is no reply filed for explaining such delay.

4. The learned advocate for the petitioner has relied upon an unreported decision of this Court (Coram : A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court has set aside the detention order. In paragraph 6, this Court has observed as under :-

" ... ...

6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The

representation is forwarded on18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how ti was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation.

... ..."

5. Mr.Kogje, learned AGP submitted that there is some delay in forwarding the representation dated 2.1.2004, which was received by the detaining authority on 3.1.2004, but the same was forwarded to the State Government on 9.1.2004. He submitted, of course, the State Government has received the said representation on 19.1.2004 and the same was rejected on 21.1.2004. The detaining authority has not even filed any reply explaining the delay.

6. In view of the aforesaid facts and circumstances of the case and in view of the fact that even the detaining authority has not despatched the representation to the State Government in time, and the detaining authority has not filed any reply explaining the reasons for such delay and, therefore, on the ground of delay in forwarding the representation to the State Government, this petition is required to be allowed.

7. Considering the said aspect, this petition is allowed. The order of detention dated 26.12.2003 is quashed and set aside. The detenu, Smt.Manjulaben, w/o. Kalidasbhai Ukabhai Mali, is ordered to be set at liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

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